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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,241	11/17/2003	Terri P. Cleveland	89843.125003	5002
23469	7590	06/15/2006		
JAECKLE FLEISCHMANN & MUGEL, LLP 190 Linden Oaks ROCHESTER, NY 14625-2812			EXAMINER AYRES, TIMOTHY MICHAEL	
			ART UNIT 3637	PAPER NUMBER

DATE MAILED: 06/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/715,241	Applicant(s) CLEVELAND ET AL.	
	Examiner Timothy M. Ayres	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-18 and 30-44 is/are pending in the application.
- 4a) Of the above claim(s) 35-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-18 and 30-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 35-44 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The claims are directed to a gun rack that does not recite any of the structure of the safe, which was the invention elected on 11/23/05 and examined in the first office action.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 35-44 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are: structure of the safe (casing).

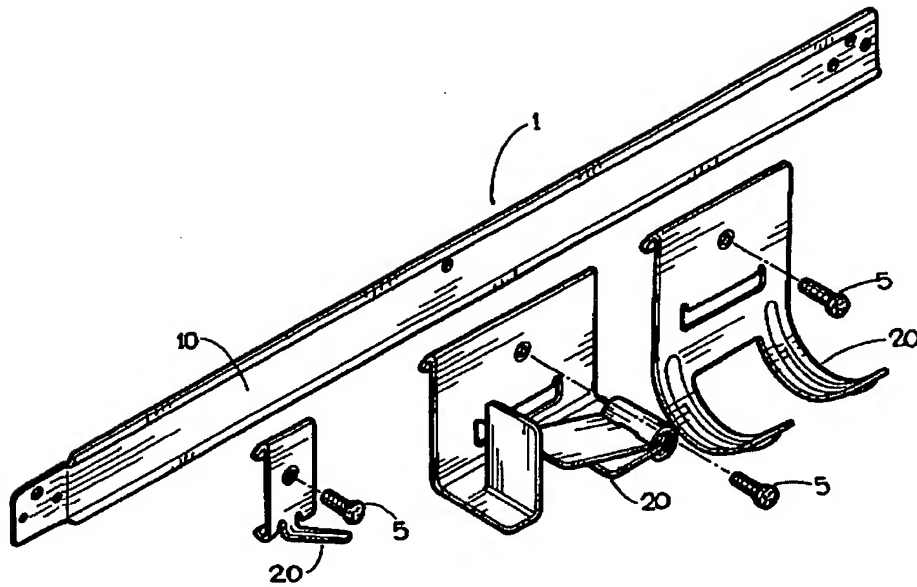
Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

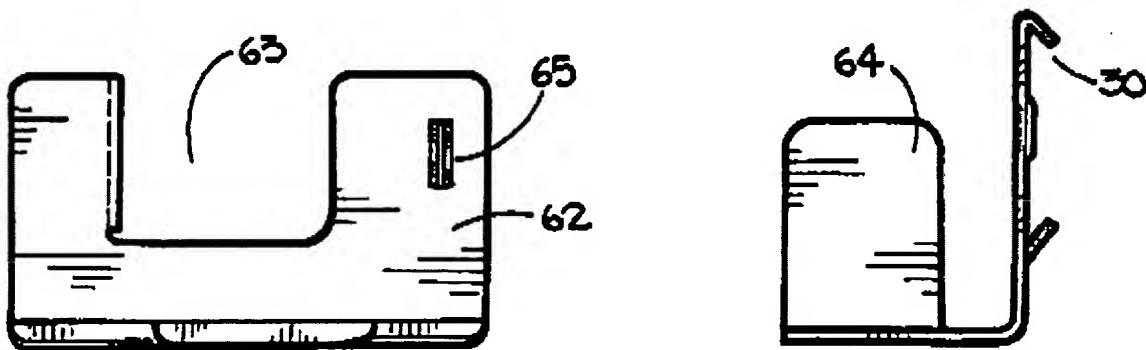
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 17, 18, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent 5,687,856 to Kendrena. Kendrena '856 discloses a tool rack with a bracket (10) that receives a barrel-receiving module (20,60). The bracket (10) receives the barrel receiving module (20,60) in a groove formed between the bracket (10) and the wall as seen in figure 2. The barrel-receiving module (60) has a barrel-receiving cradle (63). A clip (30) and a secondary clip (33) of the barrel-receiving module (60) are movably received by the bracket (10). The clip (30) extends from the rear wall of the barrel-receiving module (60). The term "generally parallel" can be taken broadly as anything not generally perpendicular, i.e. up to a 45-degree angle between the elements. Therefore the clip (30) is seen as generally parallel to the rear wall as seen in figure 6a. The barrel-receiving module (60) is L-shaped as best seen in figure 6c.



Kendrena '856 Figure 1

7. The examiner considers the tool rack of Kendrena to be capable of holding barrels of guns since it is disclosed as holding tool handles (99) and tool handles (99) have the same shape as the barrel of a gun. Kendrena does not teach a safe, but since only a wall is recited and not a structure of the safe, it is therefore seen that the wall that Kendrena's tool rack is attached to will meet this limitation.



Kendrena '856 Figure 6b

Kendrena '856 Figure 6a

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 9-11, 13, and 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5,687,856 to Kendrena in view of US Patent 5,435,641 to Dumon Dupuis. Kendrena teaches every element as claimed and discussed above except the bracket having a first and second leg coupled offset by a transition member. Dumon Dupuis teaches a safe with a bracket (39) that has a first leg and second leg offset by a transition member as seen in figure 1. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the rack of Kendrena by replacing the bracket to be able to put the barrel receiving modules in the

Art Unit: 3637

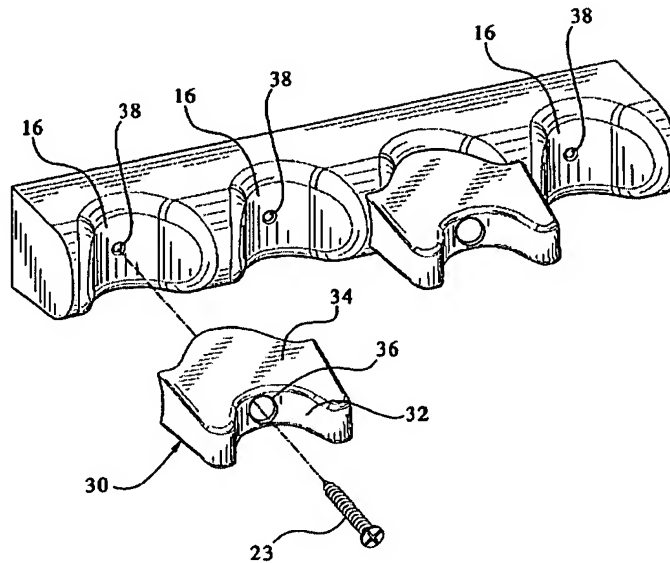
safe as taught by Dumon Dupuis to allow the bracket to be easily adjusted in height inside the safe.

11. Claims 1, 4, 5, 9-11, and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,415,932 to Fiscus in view of US Patent 5,224,609 to Bauer. Fiscus '932 teaches a gun barrel module (10) with barrel receiving cradle (16). An extension module (30) has a coupling end that is received in the barrel-receiving cradle (16) and secured using a screw (23). The gun barrel module (10) is attached to a wall (25) via screws (23) as seen in figure 2. The firearm and the safe structure (walls, doors, and casing) are not positively recited.

12. Fiscus does not expressly disclose a groove formed between the bracket and the wall and the clip configured to be positioned in the groove and against the wall. Bauer teaches a bracket (1) that is attached to a wall (2). The bracket (1) has grooves formed between the bracket (1) and the wall (2) as seen in figures 1, 3, 4, and 7. Barrel receiving modules (3,4) have clips (16,160) that are received in the grooves against the wall (2). The clips (16,160) are parallel with the rear wall of the barrel receiving modules (3, 4). The bracket (1) has first legs (8,10) and second legs (9,11) connected by a transition member (6, 7). The first and second legs are parallel to each other and the transition member offsets them. At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the gun rack of Fiscus by using the

Art Unit: 3637

bracket and clip structure of Bauer to allow the barrel receiving modules to be removably attached and moved along the wall.

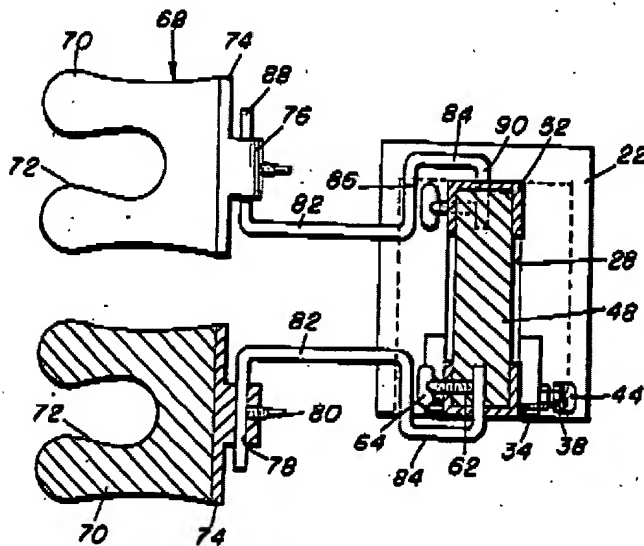


Fiscus '932 Figure 4

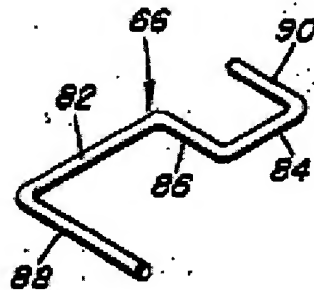
13. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,415,932 to Fiscus in view of Bauer as applied to claims 1, 4, 5, 9-11, and 30-33 above, and further in view of US Patent 2,783,896 to Agostini. Fiscus in view of Bauer does not expressly disclose a extension module with extension clips. Agostini '896 discloses a gun rack (10) with a bracket (48). A barrel-receiving module (68) has a barrel-receiving cradle (72). A plate (74) with a clip (76) extends from the rear wall of the barrel-receiving module. A bore (78) is in the clip (76), which allows an extension module (66) to be movable received and thereby allowing the barrel-receiving module

Art Unit: 3637

(68) to be movable mounted to the bracket (48) since the extension module (66) is movable mounted to the bracket (48). The extension module (66) includes a first side (82) with a first extension clip (88) extending therefrom and a second side (84) with a second extension clip (90) extending therefrom. The first and second extension clips (90,88) are parallel and in opposite directions as seen in figure 2. Please note that the examiner considers a clip to be any device that grips or clasps, which the bores (58,78) do to the rod shape of the extension module with the help of set screws (80,64). Also, it should be noted that the bracket (48) is capable of being adapted on an interior surface of a safe (floor). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the rack of Fiscus in view of Bauer by adding the extension clip of Agostini to allow for adjustment of the barrel receiving module.

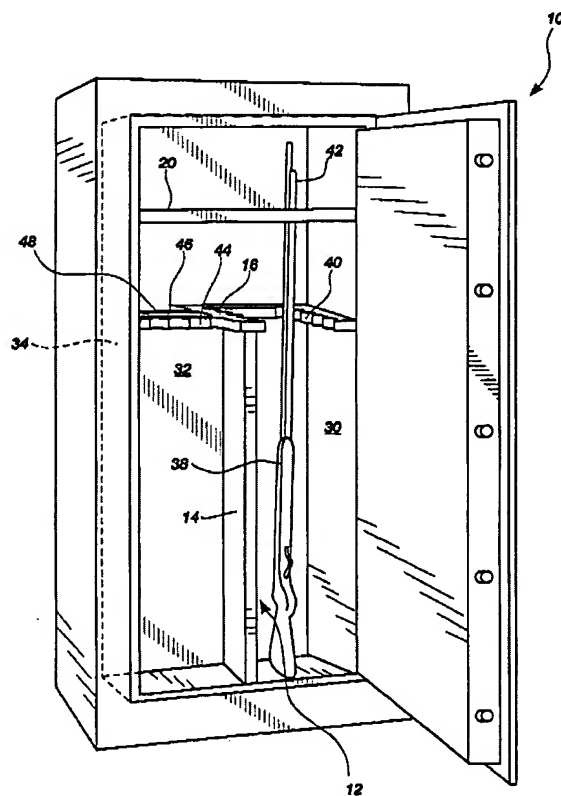


Agostini '896 Figure 3



Agostini '896 Figure 2

14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,042,207 to Crosby in view of US Patent 6,415,932 to Fiscus and US Patent 5,224,609 to Bauer. Crosby '207 discloses a configurable safe (10) that stores firearms (42). The safe has a shelving system (20,22,24,26,28) that can be removed for access to a gun rack (16). The interior of the safe has three interior walls (30,32,34) and a door as shown in figures 1 and 2. The gun rack has barrel-receiving cradles (40,44,46) including one in the corner as best seen in figure 3.



Crosby '207 Figure 2

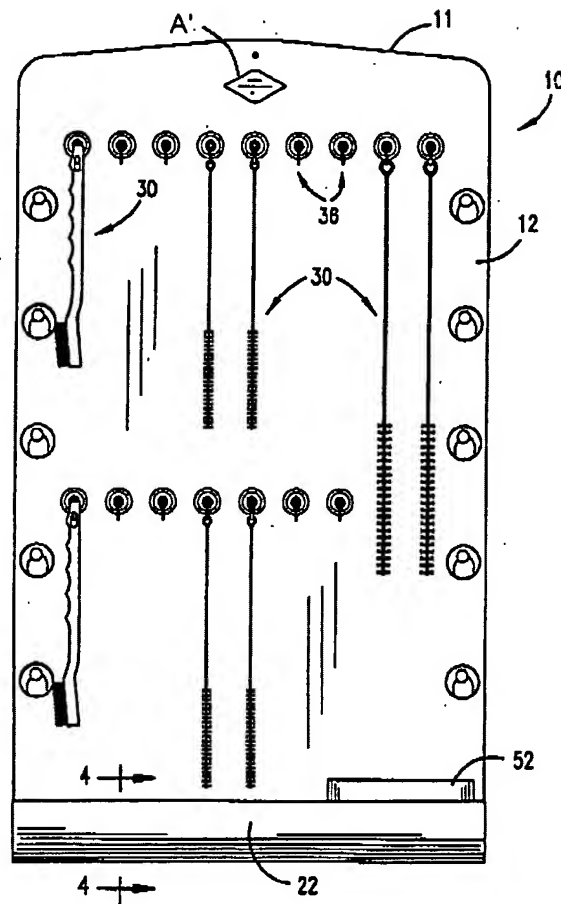
15. Crosby '207 does not expressly disclose a bracket receiving a clip of a barrel-receiving module with a barrel-receiving cradle, a groove formed between the bracket and the wall and the clip configured to be positioned in the groove and against the wall, the clip extending from and parallel to a rear wall of the barrel-receiving module, and the bracket including first and second legs parallel and offset from each other with a transition member between. Fiscus '932 teaches a gun barrel module (10) with barrel receiving cradle (16). An extension module (30) has a coupling end that is received in the barrel-receiving cradle (16) and secured using a screw (23). The gun barrel module (10) is attached to a wall (25) via screws (23) as seen in figure 2. At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the safe of Crosby and modify it to receive the bracket and barrel receiving module of Fiscus on at least one interior wall by removing part of the existing rack of Crosby so that the interior can be arranged/changed to receive scoped and non-scoped guns.

16. Crosby in view of Fiscus does not expressly disclose a groove formed between the bracket and the wall and the clip configured to be positioned in the groove and against the wall.

17. Bauer teaches a bracket (1) that is attached to a wall (2). The bracket (1) has grooves formed between the bracket (1) and the wall (2) as seen in figures 1, 3, 4, and 7. Barrel receiving modules (3,4) have clips (16,160) that are received in the grooves against the wall (2). The clips (16,160) are parallel with the rear wall of the barrel receiving modules (3, 4). At the time of the invention it would have been obvious for a person of ordinary skill in the art to modify the safe of Crosby in view of Fiscus by using

the bracket and clip structure of Bauer to allow the barrel receiving modules to be attached without removing the bracket or affecting any other barrel receiving modules.

18. Claim 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,042,207 to Crosby in view of US Patent 6,415,932 to Fiscus and US Patent 5,224,609 to Bauer as applied to claims 12 and 13 above, and further in view of US Patent 5,921,407 to Kabanek. Crosby modified by Fiscus and Bauer discloses every element as claimed and discussed above except the internal surface of the door have knobs, a lip for further supporting articles, and a name plate and hook panel with hooks on it. Kabanek '407 discloses a panel (12) with a lip (13, 20). Hooks (36) are attached to the panel (12) and as best understood a nameplate (A') is located near the top of the panel (12). The examiner considers that the hooks (36) are capable of holding a bungee cord and some can be used as such and in combination with the lip to support articles and while the others are the series of hooks as recited in claim 15. The hooks are also functionally equivalent to knobs. At the time of the invention it would have been obvious for a person of ordinary skill to mount the panel of Kabanek to the door of Crosby modified by Fiscus and Bauer so that the door can have hooks with a pleasant appearance while allowing for articles to be easily picked out and replaced (Kabanek '407, Col. 1, lines 34-42). The bungee cord and the articles held by it are not part of the claim and not given patentable weight. Note: It is also obvious to combine a nameplate with hooks as is done in the majority of young children's classrooms for coat racks.

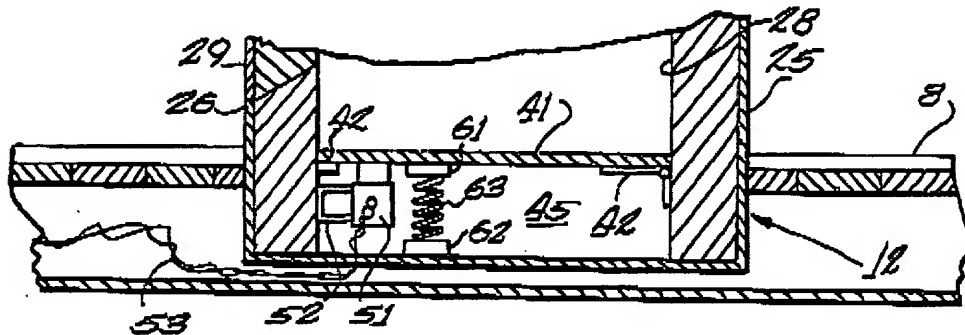


Kabanek '407 Figure 2

19. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6,415,932 to Fiscus in view of US Patent 5,224,609 to Bauer as applied to claims 1, 4, 5, 9-11, and 30-33 above, and further in view of US Patent 3,899,983 to Hernandez. Fiscus in view of Bauer discloses every element as claimed and discussed above except a bottom storage compartment including a removable panel. Hernandez '983 teaches a safe (11,12) with a concealed compartment (45) in the bottom that is covered by a panel (41). At the time of the invention it would have been obvious for a person of ordinary skill in the art to take the bracket of Fiscus in view of Bauer and to

Art Unit: 3637

put it in the safe of Hernandez so that a hidden and unnoticeable concealed compartment can be used to keep valuables extra safe while have a rack for tools (Hernandez '983, Col. 1, lines 33-44).



Hernandez '983 Figure 4

Response to Arguments

20. Applicant's arguments filed 3/27/06 have been fully considered but they are not persuasive. The argument with respect the Kendrena reference is not persuasive because it is the rear wall and clip are generally parallel. Applicant's arguments with respect to claim 1 and the other references have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on MON-THU 8:00 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TMA
06/06/06



JANET M. WILKENS
PRIMARY EXAMINER
Art 3637